**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**INCOME TAX APPEAL (LOD.) NO.360 OF 2003**

The Commissioner of Income tax ..Appellant.

V/s.

M/s.Acrow India Ltd. ..Respondent.

Mr.A.N.Kotangale for appellant.

Mr.A.P.Sathe with Mandar Vaidya for respondent.

**CORAM : H.L.GOKHALE AND J.P.DEVADHAR, JJ.**

**DATED : 27TH NOVEMBER, 2006.**

**P.C. :-**

Appeal is taken on board for admission. Heard Mr.Kotangale for the appellant. Mr.Sathe appears for the respondent.

2. Appeal is concerning the decision of the Income Tax Appellate Tribunal for the assessment year 1991-92. Two questions of law are sought to be raised. The second question is with respect to the part of the order of the Tribunal which directs the deletion of the addition of the sales tax from the total turnover for ascertaining deduction under section 80HHC of the Income Tax Act. All that the Tribunal has done is to follow the decision of the Division Bench of this Court in the case of **C.I.T. V/s. Sudarshan Chemicals Ltd. reported in 245 I.T.R. 769**.

3. The other question is with respect to the

Tribunal's order directing the order of deletion of the addition of Rs.17,79,248/- being the value of closing stock. As far as this aspect is concerned, the statement given by the respondent assessee to the bank is sought to be relied by the revenue. As far as that aspect is concerned, the Tribunal has clearly held that the valuation of the stock declared to the bank is in fact inflated and that the correct valuation of the stock was not suppressed from the revenue. The Tribunal has relied on the Judgment of the Madras High Court in the case of **C.I.T. V/s. N.Swamy** reported in **200 (241) I.T.R. 363**. There the Division Bench has held that the burden of proof in such a case is on the revenue and the same could not be discharged by merely referring to a statement of the assessee to a third party. In our view, there is no reason to interfere with the decision of the Tribunal inasmuch it has followed the decision of the Division Bench of this Court and the Madras High Court.

4. Appeal is dismissed.

**(H.L.GOKHALE, J.)**

**(J.P.DEVADHAR, J.)**